

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 2612

INTRODUCER: Criminal Justice Committee and Senator Storms

SUBJECT: Forensic Mental Health

DATE: April 13, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Walsh	CF	Favorable
2.	Cellon	Cannon	CJ	Fav/CS
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides additional responsibilities for certain contractors of the Department of Children and Family Services (DCF) and provides for set-asides for service providers that have supportive employment programs. The bill requires that DCF make certain training available to correctional personnel. The bill provides for involuntary outpatient treatment plans that require patients to take all prescribed medications in certain circumstances.

The bill creates a new section of the Florida Statutes, which provides for the creation of a forensic mental health probation and parole program through the Department of Corrections (DOC); including program requirements and the creation of forensic probation officers. The bill authorizes the chief judge of each circuit to establish a mental health court.

The bill requires the Office of Program Policy Analysis and Government Accountability to perform a study of the forensic mental health system, which examines the causes impacting the incarceration of the mentally ill in state and local correctional facilities.

This bill substantially amends the following sections of the Florida Statutes: 394.457, 394.4655 and 948.001.

The bill creates section 948.0395, Florida Statutes.

II. Present Situation:

More than twice as many people with mental illness live in prisons as in state mental hospitals.¹ It is estimated that between seven and eight percent of all arrests in the United States involved people with acute mental illnesses requiring immediate treatment.² DCF reports that up to 23 percent of Florida county jail inmates experience serious mental illness.³ Thus, there has been growing concern that state and county correctional facilities could become the largest psychiatric institutions in Florida, at enormous expense to taxpayers.⁴ Recently, there have been several ongoing initiatives attempting to address the growing number of persons with mental illness who encounter the criminal justice system, including the Criminal Justice, Mental Health, and Substance Abuse Policy Council and the Criminal Justice, Mental Health and Substance Abuse Reinvestment Grant Program.⁵

Department of Corrections Mental Health Services

The delivery of mental health services to inmates incarcerated with the Department of Corrections (DOC or department) is governed by ss. 945.40-945.49, F.S., known as the Corrections Mental Health Act. The DOC has a graduated placement scheme for mentally ill inmates (Transitional Care, Crisis Stabilization Care, and Mental Health Treatment Facilities). Inmates in the custody of the department who have mental illnesses that require hospitalization and intensive psychiatric inpatient treatment or care receive appropriate treatment or care in DOC mental health treatment facilities designated for that purpose.⁶

Moreover, in accordance with Florida law, DOC health services area of program responsibility is headed by a physician or health care administrator who is responsible for the delivery of health services to offenders within the system and who has direct professional authority over such services.⁷ The Assistant Secretary for Health Services of the DOC is responsible for developing a comprehensive health care delivery system and promulgating all department health care standards.⁸

¹ Emma Schwartz, *Mental Health Courts: How Special Courts Can Serve Justice and Help Mentally Ill Offenders*, U.S. News & World Report, Feb. 7, 2008, <http://www.usnews.com/articles/news/national/2008/02/07/mental-health-courts.html>, (last visited March 23, 2010).

² Florida Supreme Court, April 2007, <http://www.floridasupremecourt.org/clerk/adminorders/2007/sc07-11.pdf>, (last visited March 23, 2010).

³ Supreme Court of Florida, *Chief Justice Lewis to Participate in April 30 National Summit & to Hold Statewide Criminal Justice Mental Health Summit this Fall*, http://www.floridasupremecourt.org/pub_info/documents/pressreleases/2007/04-26-2007_MentalHealthSummit.pdf, (last visited March 22, 2010).

⁴ Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

⁵ Both of these programs were created by the Florida Legislature in 2007. House of Representatives Staff Analysis for HB 349 (2009)(on file with the Children, Families and Elder Affairs Committee).

⁶ Florida Department of Corrections 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

⁷ Section 20.315(3)(c), F.S.

⁸ Section 945.6034(1), F.S.

The process of identifying inmates with mental illness in prison begins with Health Services and release staff in the institutions. Health Services staff who are qualified to determine the level of care needed for each inmate work with release staff to locate a facility that will meet the offender's needs, *e.g.* assisted living facility, nursing home, mental hospital or other facility equipped to handle mentally ill offenders. Cooperation is required by these facilities to accept these inmates/offenders upon release. It also requires institutional and facility staff to assist these offenders with applying for benefits so they will have them in time for release. Probation staff investigates the proposed plan prior to release to ensure the residence plan is in compliance with orders of supervision, statutory and local ordinances, and once released resume supervision and monitoring of the offender at the facility. Currently, while the offender is still incarcerated, there is coordination and cooperation between institutional staff (Health Services and release officers), mentally ill health care facilities, and the probation officer who are all working towards reentry of mentally ill inmates.⁹

Correctional probation officers are responsible for public safety by monitoring and enforcing conditions of supervision. Section 947.1405(8), F.S., provides that caseloads for conditional release may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety and effectively monitor offenders on conditional release. Caseload restrictions also exist for other forms of community supervision found in chapter 948.¹⁰ Probation officers are not currently responsible for "compliance with care" including ensuring an offender takes their prescribed medications daily.¹¹

Plans for release are initiated by institutional staff who work with staff from Health Services if the inmate is being released with mental health issues. Health Services staff are responsible for locating a facility that will address the inmate's needs upon release, whether there is supervision to follow or not. Probation staff are responsible for confirming that the release plan is not in conflict with their orders or statutory or local ordinance residence restrictions.¹²

For sex offenders in particular, probation staff work with institution staff and Health Services staff to place sex offenders with mental illness in a facility that will meet the sex offender's needs. Community resources and/or facilities that will agree to take these sex offenders are very limited and are needed in order to prevent these offenders from being admitted to a hospital via a Baker Act. Alternatively, many sex offenders become homeless because of the inability to place the offenders in an approved location due to residency restrictions and requirements.¹³

Currently, probation officers are responsible and required to report all willful violations; however, it is the court or the Parole Commission, not the probation officer, that makes the decision on sentencing the offender on the violations reported.¹⁴

⁹ Florida Department of Corrections 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

¹⁰ s. 948.001(4), F.S., provides a 50:1 caseload ratio for drug offender probationers and s. 948.10(2), F.S., provides for a 25:1 caseload ratio for community controllees. Caseloads for regular probation have no statutory limit.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Department of Children and Families Forensic Mental Health Programs

Florida's forensic system is a network of state facilities and community services run by DCF for individuals who have a mental illness and are involved with the criminal justice system. DCF provides mental health assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity. Individuals must be adults over the age of 18 or juveniles adjudicated as adults. Diagnostic categories include all major DSM-IV¹⁵ disorder classifications (primarily schizophrenia and mood disorders) and secondary diagnoses, such as substance abuse and personality disorders, which are present for a significant number of people.¹⁶

Among the services provided by DCF are: evaluations for competency to proceed; treatment following a finding of not guilty by reason of insanity; and services to individuals on conditional release in the community. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers. In addition to general psychiatric treatment approaches, other specialized services include: psychosocial rehabilitation; education; substance abuse awareness and prevention; vocational training; occupational therapies; and a full range of medical and dental services.¹⁷

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. DCF admits over 1,000 individuals into state treatment facilities on a yearly basis.¹⁸

DCF provides community services as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.¹⁹

DCF currently has 1,180 secure forensic beds and 497 forensic step-down beds. The budget for the 2009-10 fiscal year for secure forensic facilities was \$147,525,854 and for forensic step-

¹⁵ Psychiatric diagnosis for both children and adults are characterized by the *Diagnostic and Statistical Manual of Mental Disorders*, also known as the DSM-IV, which is published by the American Psychiatric Association. See <http://allpsych.com/disorders/dsm.html>.

¹⁶ Florida Department of Children and Families, *About Adult Forensic Mental Health*, <http://www.dcf.state.fl.us/programs/mentalhealth/forensic/about.html>, (last visited March 23, 2010).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

down beds it was \$61,919,473. In FY 2008-09, 2,822 adults were served in forensic commitment, per Chapter 916, F.S.²⁰

DOC and DCF Collaboration on Mental Health Services

Currently, DOC and DCF have a cooperative agreement when a DOC inmate with a mental illness is reaching his or her end of sentence. DOC refers the inmate to DCF to set up a mental health appointment with a contracted mental health provider in the community. The inmate is given the location, date and time of the appointment near his or her residence in the community, with the appointment to occur shortly after release. Inmates are not placed on conditional release. There is no forensic mental health probation or parole program, although some counties in Florida have probation officers who specialize in managing mental health cases.²¹

Mental Health Courts

Mental health courts have been proposed as a solution to some of the disproportionate effects the criminal justice system has on mentally ill defendants.²² The courts generally deal with individuals charged with nonviolent crimes or misdemeanors who have been diagnosed with a mental illness or co-occurring mental health and substance abuse disorders.²³ In a mental health court, a special system is set up to handle nonviolent defendants with mental illness, through specialized training of law enforcement officers, judges, prosecutors, defense attorneys and mental-health and substance abuse counselors.²⁴ When mentally ill defendants appear before the court, instead of being sentenced to jail or standard probation, defendants are diverted to treatment programs and remain under regular supervision for a fixed length of time.²⁵

Approximately 10 counties in Florida have mental health courts.²⁶ Mental health courts which use forensic probation and parole officers report that probationer re-arrest rates are lower, recurrences are fewer, and subsequent criminal activity by the probationer, should it occur, is of a lower severity.²⁷ According to DOC, state probation officers assigned to mental health courts are not formally trained in forensic mental health.²⁸

²⁰ E-mail communication from Florida Department of Children and Families, March 23, 2010 (on file with the Children, Families, and Elder Affairs Committee).

²¹ Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

²² When mentally ill individuals are sentenced and confined to cells, their conditions often worsen, increasing their propensity to act out. Thus, they face disproportionately harsher discipline. Emma Schwartz, *Mental Health Courts: How Special Courts Can Serve Justice and Help Mentally Ill Offenders*, U.S. News & World Report, Feb. 7, 2008, <http://www.usnews.com/articles/news/national/2008/02/07/mental-health-courts.html>, (last visited March 23, 2010).

²³ Bureau of Justice Assistance, *Mental Health Courts Program*, <http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html>, (last visited March 22, 2010).

²⁴ Mary Hurst, *Mental Health Court Proposed*, The Florida Times-Union, October 18, 2006, available at: http://jacksonville.com/tu-online/stories/101806/nen_5601752.shtml, last visited March 24, 2010.

²⁵ Emma Schwartz, *Mental Health Courts: How Special Courts Can Serve Justice and Help Mentally Ill Offenders*, U.S. News & World Report, Feb. 7, 2008, <http://www.usnews.com/articles/news/national/2008/02/07/mental-health-courts.html>, (last visited March 23, 2010).

²⁶ Florida Department of Corrections 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee). These counties include, but are not limited to: Alachua, Brevard, Broward, Nassau, Okaloosa, Osceola, and Sarasota Counties. National Association of State Courts, *Mental Health Courts*, <http://www.ncsconline.org/WC/CourTopics/StateLinks.asp?id=60>, (last visited March 24, 2010).

²⁷ Conversation with Mark Speiser, Circuit Judge, Seventeenth Judicial Circuit of Florida, March 23, 2010.

²⁸ Florida Department of Corrections 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

III. Effect of Proposed Changes:

Section 1

The bill adds that in addition to the other requirements, the Department of Children and Families, as the Mental Health Authority of Florida, is responsible for ensuring that each state contract mental health agency that works with individuals who are under forensic mental health probation and parole:

- Ensures that each person enrolled in the probation and parole program has a forensic case manager who is working toward reducing the need for institutional placement;
- Coordinates between the forensic probation and parole program, mental health court, and other agencies needed to help improve access to care.

DCF is further responsible, in cooperation with each circuit administrator, for supervising all forensic mental health programs and contracts, which are carried out by DCF's central office staff.

The bill provides for supportive employment programs. DCF, subject to current resources, shall examine opportunities to generate cost savings through the use of set-aside agreements with supportive employment programs that serve forensic mental health consumers living in the community under plans of conditional release.

The bill adds training for correctional personnel. DCF may make available training on the special needs of adult forensic mental health inmates incarcerated in state correctional facilities operated by the Department of Corrections or a private vendor to the staffs of these institutions.

Section 2

The bill amends s. 384.4655, F.S., relating to involuntary outpatient placement to add that patients supervised by a forensic mental health case manager may have a plan requiring the patient to take all prescribed medications.²⁹ DCF notes that courts typically include such requirements in conditional release orders for forensic clients.³⁰

Section 3

The bill amends s. 948.00, F.S., to define "department" to mean the Department of Corrections for purposes of the new provisions of Chapter 948.

Section 4

The bill creates s. 948.0395, F.S., which establishes a forensic mental health probation and parole program through the Department of Corrections (department).

²⁹ Often, because of the side effects of medication, mentally ill individuals stop taking their medications. Mary Hurst, *Mental Health Court Proposed*, The Florida Times-Union, Oct. 18, 2006, available at: http://jacksonville.com/tu-online/stories/101806/nen_5601752.shtml, (last visited March 24, 2010).

³⁰ Additionally, treatment plans for Baker Act involuntary outpatient placement routinely include requirements that the individual be compliant with the medication regimen. Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

The bill requires that the department create a forensic mental health probation and parole program that shall be responsible for reentry of mentally ill inmates back into the community.

The bill requires that the program be focused on compliance with care, supervision of conditional plans of release, tracking information, and reducing inappropriate placements and jail utilization. The department shall make sex offenders a high priority for supervision and for placement in safe housing that is not located near children.

The bill requires that the program be established within the current department funding and the secretary may organize the probation and parole staff and programs to assist with the development of the forensic mental health program. The department may have a probation officer serve in a dual role as a trained forensic mental health probation officer as well as an officer for persons subject to general probation and parole.

The bill authorizes the department to designate correctional probation officers as forensic probation officers. The department shall establish requirements for such forensic mental health probation officers. Forensic mental health probation officers are required to coordinate issues and compliance with DCF's forensic case managers to reduce the need for incarcerations due to violations and work with all relevant agencies to further the goals of the forensic mental health program.

The department may establish an advisory workgroup to assist the department in gathering input, providing professional expertise, and developing appropriate policies and procedures to ensure implementation of this section.

The department is required to adopt rules to implement this section.

Section 5

The bill provides that the chief judge of each circuit may establish a mental health court to help reduce the cost of managing cases that pertain to persons with mental illnesses who have court involvement. The chief judge shall supervise the mental health court.

According to the bill, each mental health court shall:

- Have an advisory workgroup for the purpose of providing input, which shall serve as a coordinating workgroup to help improve access to community-based services and improve access to care for individuals involved with the criminal justice system.
- Establish eligibility criteria. Individuals charged with felonies who upon evaluation are considered to be a minimal threat to public safety may be considered for mental health court involvement.
- Be focused on improving compliance with mental health care and treatment and may require state agencies to comply with its orders and directives.
- Supervise the processing of felonies and misdemeanors and determine which cases shall be referred for criminal prosecution and incarceration and those who are eligible for diversion programs and alternatives.
- Be the ongoing contact with the criminal justice system for persons found incompetent to proceed and supervise the community control for such persons under s. 916.145(2), F.S. (See

the Technical Deficiencies section of the Bill Analysis regarding correcting the statutory citation.)

- Process all evaluations for persons charged with a felony and require evaluations for competency to proceed or a determination of not guilty by reason of insanity.

Furthermore, a mental health court has discretion to:

- Establish drug repository programs and accept unused medications from nursing homes and licensed assisted living facilities to be repackaged and used for mental health court participants who need medications;
- Provide a waiver of charges and allow the court flexibility in dispositions;
- Authorize the use of medication algorithms for mental health court participants;
- Require individuals who are enrolled in Medicaid, prepaid mental health plans, or Medicaid health maintenance organizations to obtain maximum available reimbursement for all medically necessary services.

Each mental health court shall have a coordinator to:

- Run the day-to-day elements of the program;
- The coordinator shall supervise the forensic mental health case managers and receive reports from the case managers;
- The coordinator shall evaluate the threat to public safety and make recommendations to the court regarding compliance or appropriateness for court involvement.

A mental health court may supervise compliance with the assisted outpatient treatment laws as such laws relate to court requirements that outpatients take their medications.

Mental health courts shall be funded from within existing resources or from grants under s. 394.658, F.S.

Section 6

The bill requires DCF to adopt rules relating to supportive housing for persons released from inpatient forensic mental health programs. DCF is further required to define the term “supportive housing” and shall address consumer health and safety and the use of state subsidies.

Section 7

The bill directs the Office of Program Policy Analysis and Government Accountability to perform a study of the forensic mental health system. The study shall examine the causes that impact the incarceration of the mentally ill in state and local correctional facilities. The report shall be submitted to the President of the Senate and the Speaker of the House of Representatives by December 31, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The language created in Section 5 of the bill, regarding the establishment of mental health courts, requires state agencies to comply with court orders and directives which may not be statutorily authorized or mandated. DCF notes that this is a possible separation of powers issue.³¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill would establish a forensic mental health probation and parole program through the Department of Corrections. This program would service individuals and inmates, but it is not clear at this time how many would be served.

C. Government Sector Impact:

Counties who adopt the use of forensic probation and parole officers may see cost savings due to a decrease in incarcerations.

The bill requires that all forensic mental health programs and contracts be supervised by DCF central office staff in cooperation with each circuit administrator. DCF reports that this provision runs contrary to how DCF's management structure functions and would overlook the legislative intent in s. 394.9082, F.S., which is to have managing entities oversee service delivery for behavioral health services in local geographic areas. Additionally, centralization of forensic programs and contracts would require additional staff in the central office, increased travel to other parts of the state where the contracted provider is located, and thus, could result in a cost of almost \$2 million to DCF.³²

The bill requires that mental health courts be funded through existing resources or grants.

The Department of Corrections notes that state probation officers are not formally trained in forensic mental health. The Department of Corrections states that this bill would be

³¹ *Id.*

³² Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

difficult to implement with current caseloads and staffing. It would either require another specialized caseload or a distribution of these offenders to all probation officers. Currently, there are an insufficient number of probation officer positions to create another specialized caseload group statewide to handle all the mental health probation cases without another program suffering from decreased supervision. The alternative, training all 2,119 probation officers in forensic mental health, would require additional funding.³³

VI. Technical Deficiencies:

Beginning on line 49 of the bill, the creation of the forensic probation and parole program is placed in Chapter 394, F.S., the Florida Mental Health Act. However, the forensic probation and parole program is also created in Chapter 948, F.S., Probation and Parole, a responsibility of the Department of Corrections.

DCF recommends placing the provision regarding possible cost savings through set-aside agreements (beginning on line 62) be placed in Part IV of Chapter 394, F.S., which covers community mental health programs, rather than Chapter 394, F.S., which deals with general departmental operation and administration issues.³⁴

On line 209, the bill references s. 916.145(2), F.S. However, there is no such section item, just a section entitled s. 916.145, F.S., with no further subsections.

VII. Related Issues:

The bill requires DCF to make available training on the special needs of adult forensic mental health inmates to the staffs of state correctional facilities operated by DOC or private vendors. Forensic mental health inmate is not defined in the bill and DOC reports it is unclear as to what this training may entail. The training may run counter to the current statutory scheme in which DCF is the agency charged with providing forensic services, while DOC is required to provide mental health services to inmates committed to it.³⁵

The bill would establish a forensic mental health probation and parole program through the DOC. DCF would need to ensure that each of its contracted providers retain a forensic case manager to work with a forensic mental health probation officer and a mental health court “coordinator.” Unless amended, the bill indicates that the mental health court “coordinator” could “supervise” the forensic case manager.³⁶

In addition, DCF notes that the bill’s reference to the Criminal Justice, Mental Health and Substance Abuse Reinvestment Grant Program as a possible funding source for the establishment of mental health courts may not be feasible as funding is limited and the grant is time limited.³⁷

³³ Florida Department of Corrections 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children Families, and Elder Affairs Committee). Section 947.1405(8), F.S., provides that caseloads of probation officers should generally be restricted to 40 conditional release offenders per officer.

³⁴ Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

The bill requires DCF to explore cost savings through set-aside agreements with supportive employment programs. However, DCF reports that the term set-aside agreements is not clear and is not defined in the statute.³⁸

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 13, 2010:
Correcting a scrivener's error in the title of the bill.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁸ Florida Department of Children and Families 2010 Bill Analysis & Economic Impact Statement for SB 2612 (on file with the Children, Families, and Elder Affairs Committee).